



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation on October 22, 1998

NOTICE OF ACTION TAKEN -- DOCKET OST-97-2610

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Motion of **POLAR AIR CARGO, INC.** filed **10/8/98**

XX Amendment of dormancy condition:

By Order 98-7-21 the Department allocated Polar one-weekly Russian overflight frequency for its U.S.-India services via Helsinki, Finland.¹ This award was subject to the condition that it will expire automatically and the overflight frequency will revert to the Department for reallocation if it is not used for a period of 90 days. As a result of restrictions imposed by the Federal Aviation Administration on flights over Afghanistan, Polar discontinued its overflights on August 21, 1998. Thus, under the terms of the order, this overflight allocation would expire on November 21, 1998, if the carriers did not resume use of the overflight by that date.

Polar seeks amendment of the 90-day dormancy condition so as to provide that the 90-day dormancy condition would begin to run from the date that the Federal Aviation Administration modifies its prohibition on flights operating over Afghanistan to permit U.S. carrier overflights.

In support of its application, the carrier states that effective August 21, 1998, the Federal Aviation Administration (FAA) took action to prohibit all flights over Afghanistan (See SFAR 67, 63 FR 45658, August 26, 1998), and that as a result of the FAA action, use of the overflight frequency for its Indian service is not feasible. It further states that it is committed to resuming its U.S.-Indian service over the shortest route which involves use of the Russian overflight frequencies as well as operations through Afghanistan airspace when that again becomes possible. Furthermore, it states that relief from the dormancy condition is consistent with the Department's recent action involving two other U.S. carriers holding Russian overflight authority and other cases where allocations cannot be used due to economic or political circumstances.²

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¹ Annex 4 of the U.S.-Russia Agreement provides that U.S. carriers collectively may overfly and stop for non-traffic purposes on a total of 28 flights per week (14 flights eastbound and 14 flights westbound) between points in Europe and the Indian subcontinent on approved Air Traffic Services (ATS) routings. Although the Annex to the Agreement has expired, it has continued to be invoked by both parties as an operative source of rights governing the relationship.

² See Notice of Action Taken, dated September 17, 1998, in Docket OST-97-2610, where the Department granted Northwest Airlines and United Air Lines an amendment from the dormancy condition for their Russian overflight allocations.

DISPOSITION**XX Granted (See Remarks)**

The above action was effective when taken: October 22, 1998

**XX Action taken by: Paul L. Gretch, Director
Office of International Aviation**

Remarks

We have decided to grant Polar's request to amend the dormancy condition. The carrier has demonstrated an interest in using its allocated overflight frequency and, except for unique circumstances beyond its control, it states that it would be using them. Since we cannot determine here when the FAA may again permit U.S. carriers to use Afghanistan airspace for their services, we believe that the requested relief from the dormancy condition is warranted. Based on our decision in this case, the dormancy condition for Polar will now be the same as the other U.S. carriers holding Russian overflight allocations. It will now read: "The overflight allocations awarded are subject to the condition that they will expire automatically and the overflight frequencies will revert to the Department if they are not used for a period of 90 days after the date that the FAA modifies SFAR 67 to permit U.S. carrier overflights over the territory of Afghanistan."

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) immediate action was required and was consistent with Department policy; and (2) grant of the request was consistent with the public interest. To the extent not granted, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this document is available on the World Wide Web at:
<http://dms.dot.gov/general/orders/aviation>*